

DANNY THOMAS
CONSTABLE PRECINCT ONE
TRAVIS COUNTY



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AUSTIN, TEXAS 78721
(512) 854-7510 FAX (512) 929-0981

RECEIVED
BY MAIL

APR 20 2009

CLERK US DIST COURT
MINNEAPOLIS MN

DATE: 3/20/2009

Reference Cause # 45DC-MN No. 08-CV-5466 (RHK/SRN)

☒ Was served on March 20th 2009, at 9:42 am/pm

Place of Service:

- ☒ Secretary of State
☐ Commissioner of Insurance
☐ Highway Commission
☐ Attorney General
☐ Texas Employment Commission
☐ Farmers Ins. Group
☐ State Farm Insurance
☐ Prentice Hall ☐ U.S. Corp
☐ other _____

Person accepting Service: Helen Lupacis

Service of:

- ☒ Citation ☐ TRO
☐ Writ ☐ Summons
☐ Other _____

of documents 1

☐ Was not served for the following reason(s) _____

☐ OTHER _____

Danny Thomas

Danny Thomas
Travis County Constable, Pct. 1

By Officer Det. [Signature]

Unit 104

SCANNED

APR 20 2009

U.S. DISTRICT COURT EPLS

AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF TEXAS

RECEIVED
MAR 23 2009
TRAVIS COUNTY CLERK
FBI

Firepond, Inc.,

Plaintiff

v.

Morrison & Foerster LLP,

Defendant

Civil Action No. USDC-MN No.08-CV-5466 (RHK/SRN)

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES**

To: Acclaim Financial Group, LLC, c/o David Pridham Intellectual Property Navigation Group, LLC, 207 C North Washington Avenue, Marshall, TX 75670.

☒ **Production:** YOU ARE COMMANDED to produce and permit inspection and copying of the documents listed in Exhibit A to this subpoena at the place, date and time specified below:

Place:
Abernathy Reporting Inc.
Highway 59 South
Jefferson, Texas 75657

Date and Time:
March 31, 2009, 10:00 a.m.

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 3-17-09

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorneys representing Morrison & Foerster LLP who issue or request this subpoena are:

Charles F. Webber
cwebber@faegre.com
Elizabeth Shields Keating
lshieldskeating@faegre.com
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000

AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises (Page 2)

Civil Action No.

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for (name of individual and title, if any) Accelium Financial Group, LLC, c/o David Priddy Intellectual Property Navigation Group, LLC, 207 E. North
 was received by me on (date) 03/20/2009.

☒ I personally served the subpoena on the individual at (place) _____
 _____ on (date) _____; or

☐ I left the subpoena at the individual's residence or usual place of abode with (name) _____
 _____, a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or

☒ I served the subpoena on (name of individual) Secretary of State of Texas, who is
 designated by law to accept service of process on behalf of (name of organization) Accelium Financial Group, LLC
 _____ on (date) 03/21/2009; or

☐ I returned the subpoena unexecuted because _____; or

☐ Other (specify): _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 3/20/2009

Dedric D. Knox
 Server's signature

Dedric D. KNOX - SERGEANT
 Printed name and title

1811 Springdale #120 Austin TX
 Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A

DEFINITIONS

1. "You," "Your," or "Your" refer to Acclaim Financial Group, LLC and any and all of its agents, representatives, advisors, attorneys, and all persons acting on its behalf.
2. "Firepond" means the plaintiff Firepond, Inc. and any and all of its agents, representatives, advisors, attorneys, and to all persons acting on its behalf.
3. "Morrison" shall mean Defendant Morrison & Foerster LLP.
4. "Document" shall mean any written, printed, typed, computer generated or stored writings, or other graphic matter of any kind or nature of any computerized, mechanical, and electronic written and sound recordings or descriptions in your possession and/or control or known by you to exist. Without limiting the generality of the foregoing, "document" includes memoranda, correspondence, e-mails, letters, designs, drawings, agreements, contracts, checks, notes, leases, pledges, accounts, ledgers, endorsements, notices, reports, and analyses. If a document has been prepared in several copies, or additional copies have been made and any copy is not identical to the original (or by reason of subsequent modifications of the copy by addition of notations, or other modification or alteration, is no longer identical), each non-identical copy is a separate "document."
5. "Person" or "persons" means any individual or legal entity of any kind.
6. "Communication" refers to any transmission of information between two or more persons or recording of any transmission of information between two or more persons, whether in written, electronic, or other form, including, but not limited to, all types of correspondence, memoranda, electronic mail, presentation
7. "Relating to" or "relate to" mean concerning, referring to, setting forth, alluding to, responding to, connected with, commenting on, in response of, about, regarding, announcing, explaining, discussing, showing, describing, studying, reflecting, analyzing, or constituting.
8. The term "and" or "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

DOCUMENT REQUESTS

1. All documents in your possession that relate in any way to your; FP Tech Holdings, LLC; or FPX, LLC's acquisition, directly or indirectly, of any assets and/or liabilities of Firepond on or around February 23, 2009.
2. All documents in your possession that relate in any way to the transfer of Firepond's assets or liabilities on or around February 23, 2009.
3. All documents in your possession that relate in any way to any loan or extension of credit associated with security interests in Firepond's assets.
4. All documents that relate in any way to negotiations leading to your; FP Tech Holdings, LLC; or FPX, LLC's acquisition, directly or indirectly, of any of Firepond's assets on or around February 23, 2009.
5. Any term sheet that relates in any way to your; FP Tech Holdings, LLC; or FPX, LLC's acquisition of any of Firepond's assets and/or liabilities on or around February 23, 2009.
6. All documents that relate in any way to Firepond's financial records.
7. Documents sufficient to show the officers, directors, and shareholders or members of Firepond; FPX, LLC; FP Tech Holdings, LLC; and Acclaim Financial Group, LLC.
8. All documents that relate in any way to the formation and organization of FP Tech Holdings, LLC; FPX, LLC; and Acclaim Financial Group, LLC.
9. All documents that relate in any way to your acquisition of any security interest in Firepond's assets at any time.
10. All documents that relate in any way to your acquisition of 100% of the senior indebtedness of Firepond, as described in the website page attached hereto as Exhibit 1.
11. All documents that relate in any way to the "affiliate of Acclaim Financial Group, LLC" referred to in the website page attached hereto as Exhibit 1.
12. All documents that relate in any way to any consideration that you provided in exchange for a property interest in any of Firepond's assets between January 1, 2003 and the present.
13. All documents that relate in any way to any financing, loans, or investments that you made in or to Firepond.

14. Documents sufficient to identify your current employees and their past relationship (if any) to Firepond.
15. All documents referring or relating to Firepond's past or present unsecured creditors and the amounts of the unsecured debts at the time of the purchase of any assets and/or liabilities on or about February 23, 2009.
16. All documents referring or relating to any payments over the past year by Firepond to unsecured creditors, as well as to any agreements or intention to pay any amounts to unsecured creditors.
17. All documents showing, relating, or referring to a listing of Firepond's assets, including but not limited to intellectual property, purchased on or about February 23, 2009, and any documents referring or relating to any value, valuation, or appraisal of those assets.
18. All documents referring or relating to any communications between you and Firepond.
19. All documents referring or relating to the purchase of any assets and/or liabilities on or about February 23, 2009 that have been provided to any other of Firepond's creditors.
20. All documents referring or relating to the value and valuation, including but not limited to appraisals, of "the world class Firepond technology" referenced in the website page attached hereto as Exhibit 2.
21. All documents referring or relating to the truth of the statement, "The world class Firepond technology will continue to be the leading CPQ solution and FPX will be our new company name," in the website page attached hereto as Exhibit 2.
22. All documents referring or relating to the truth of the statement "FPX owns the rights for use of the core IP at the foundation of our Firepond products and solutions. The historical R&D investments for the Firepond product are well in excess of \$200 million," as stated in the website page attached hereto as Exhibit 2.



Firepond, Inc. is now FPX, Inc.

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News & Events

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Firepond Sale To Be Completed On February 23, 2009

MANKATO, MINNESOTA, February 17, 2009 – Firepond, Inc. (OTCBB: FPND) has received notice from its senior secured creditors that pursuant to a statutory process, all of the assets of the Company will be sold at auction on February 23, 2009.

The Company has also been advised by an affiliate of Acclaim Financial Group, LLC ("AFG") that it now holds 100% of the senior indebtedness of Firepond and that it will be bidding to acquire the assets as part of its previously announced plan to eliminate all of the indebtedness of Firepond, reinvest in the new company and, in the process, save 40 very high paying jobs in Minnesota and continue to offer Firepond's customers its market-leading configuration, pricing and quoting Software-as-a-Service solution – CPQ OnDemand. AFG has invested over \$12 million in Firepond and, upon conclusion of the sale, will be providing the new company with \$10 million of additional financing.

About FPX

Firepond (OTCBB: FPND) is the leading provider of multi-tenant, on-demand Configure-Price-Quote® software that automates and simplifies product pricing and configuration for companies and helps these enterprises improve order accuracy while reducing their cost of sales. Firepond's sales solutions help companies to optimize their sales processes whether their need is to solve complex product or pricing configuration, create product catalogs or provide an interactive selling system and dramatically improve response time. Firepond solutions provide a rapid ROI through improved order accuracy (100% of submitted orders have accurate specifications and pricing), improved proposal generation time and high user acceptance. For additional information about Firepond, visit www.firepond.com or call 1-866-UCONFIG (826-6344).

###

This press release may contain forward looking statements that involve risks and uncertainties, including statements regarding our business strategy and development plans, plans for entering into new businesses, anticipated sources and uses of funds and other statements regarding our plans, objectives, expectations and intentions that are not historical facts. Because these forward-looking statements involve risks and uncertainties, actual results could differ materially from those discussed in this press release. These risks and uncertainties are described in greater detail in the reports that we file with the Securities and Exchange Commission. Our actual results, performance or achievements may vary materially from those expressed or implied in any forward-looking statements. All forward-looking statements reflect our beliefs and expectations as of the date of this press release and should not be relied upon as representing our views as of any subsequent date. While we may elect to update these forward-looking statements publicly at some point in the future, we specifically disclaim any obligation to do so, whether as a result of new information, future events or otherwise.

Contact

Stephen Peary
Vice President, General Counsel
stephen.peary@firepond.com
507-388-0410

EXHIBIT 1

FPX, LLC. is the leading provider of multi-tenant, software as a service (SaaS) solutions for streamlining Con
Our web-based sales quoting solutions offer significant advantages over competing product configurator soft
or sales quoting software products. FPX helps streamline and accelerate sales quoting, product configurator
improving quote accuracy.

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Firepond Completes Sale

FPX now positioned to dominate CPQ market

MANKATO, MINNESOTA, February 23, 2009 - Firepond, Inc. (OTCBB: FPND) today announced that FPX, LLC (an affiliate of Texas-based Acclaim Financial Group, LLC) has acquired all of Firepond's assets. Audrey Spangenberg, CEO of AFG, will assume the title of Chairman and CEO of FPX.

Addressing the employees, Audrey Spangenberg stated, "Welcome to a new day. Today our customers, prospects and partners can be assured that the enterprise class solutions powered by Firepond in the Configuration, Pricing and Quoting space will be backed up with the necessary assets and resources required to dominate this market. The world class Firepond technology will continue to be the leading CPQ solution and FPX will be our new company name. I want to state unequivocally to our customers, partners and competitors, FPX has the combined strength of balance sheet, technology and intellectual property that is unmatched in our market space:

- Equity in excess of \$50 million
- No debt
- A \$10 million capital commitment to fund growth
- A SaaS based subscription revenue stream
- A foundation of technology that has evolved to become the leading "SaaS" Configuration, Pricing and Quoting solution operating in the "Cloud"

As FPX, we now have the ability to offer the marketplace a comprehensive set of Firepond solutions from a position of financial strength, which is a dream come true for all of the employees and a true benefit to our customers. The support and feedback we have received from our customers and active prospects regarding this announcement is extremely positive.

We will continue to distinguish FPX/Firepond from all competitors in the SaaS based, on-demand Configuration, Pricing and Quoting space as follows:

- **Financial Viability** – Now backed by a large minority owned private fund founded in 1994, FPX has the capital and commitment to ensure that every Firepond product is a market leader
- **Business Viability** – From the 25-year history of enterprise companies that have relied on Firepond to manage critical parts of their business, to the more recent SaaS based customers that depend on the configure, price, quote solutions for thousands of global users, FPX's customer list reads like a who's who of the Global 500
- **Technology Viability** – FPX owns the rights for use of the core IP at the foundation of our Firepond products and solutions. The historical R&D investments for the Firepond product are well in excess of \$200 million
- **Employee Viability** – Our employees' proven product expertise, with an average tenure with the product and in the market space of over 12 years, is one of the top reasons our customers select the Firepond solution

These metrics simply cannot be matched by our competitors. Existing customers will not miss a beat – the entire operational team remains the same plus additional senior account managers are being hired. New and existing customers will benefit from additional products, strengthened services and a renewed sense of achievement."

EXHIBIT 2

Craig Christiansen was introduced as President – Technology. Craig has been the conscience behind the Firepond product for more than 22 years and maintains responsibility for sustaining the Firepond product's technology lead.

FPX sales will be led by Vince Evers who was introduced as President – FPX Sales Worldwide. Jim Scheper will continue in his role as Vice President – Sales US and Peter Molnar will continue as Vice President – Sales EMEA. Paul Kiss has assumed the position of Regional Director – Mid-Market Sales US. This sales team averages more than 25 years of tech sales experience and is responsible for expanding the FPX sales organization.

FPX business objectives will focus on customers, employees and the products:

- Our existing customers remain our top priority as we execute plans to hire senior account managers to continue first rate services that are delivered to our strong customer base
- FPX will soon announce exciting new product additions to our application suite – enhancements enabled by our core technology that will further position FPX as the leader in this market space
- FPX is actively seeking talented people to join the FPX team and help us grow our company

About FPX

FPX, a minority owned company, is the leading provider of multi-tenant, on-demand Configure-Price-Quote® applications that automate and simplify product pricing and configuration. FPX solutions provide a rapid ROI through improved order accuracy (100% of submitted orders have accurate specifications and pricing), improved proposal generation time and high user acceptance. For additional information about FPX, visit www.fpxllc.com or call 1-866-UNCONFIG (826-6344).

###

This press release may contain forward looking statements that involve risks and uncertainties, including statements regarding business strategy and development plans, plans for entering into new businesses, anticipated sources and uses of funds and other statements regarding our plans, objectives, expectations and intentions that are not historical facts. Because these forward-looking statements involve risks and uncertainties, actual results, performance or achievements may vary materially from those expressed or implied in any forward-looking statements. All forward-looking statements reflect beliefs and expectations as of the date of this press release and should not be relied upon as representing views as of any subsequent date. While we may elect to update these forward-looking statements publicly at some point in the future, we specifically disclaim any obligation to do so, whether as a result of new information, future events or otherwise.

Contact
Business Affairs Office
FPX, LLC
(903) 938-6420

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FPX, LLC. is the leading provider of multi-tenant, software as a service (SaaS) solutions for streamlining Con Our web-based sales quoting solutions offer significant advantages over competing product configurator soft or sales quoting software products. FPX helps streamline and accelerate sales quoting, product configurator improving quote accuracy.